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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ALEKSANDR B. PETROSOV,

Defendant and Appellant.

C077364

(Super. Ct. No. 121023)

Defendant Aleksandr B. Petrosov was convicted by jury of driving under the influence of alcohol (DUI) and driving with a blood-alcohol content of 0.08 percent or more. The jury also found true an allegation defendant refused chemical testing of his blood-alcohol content. In a bifurcated hearing, defendant admitted he had three prior DUI convictions. The trial court also found defendant guilty of speeding and found true a separate allegation that his blood-alcohol content was above 0.15 percent. Defendant was sentenced to serve the upper term of three years for the DUI plus an additional 18 days for refusing the chemical testing. The trial court

also revoked his driver's license for a period of 10 years and designated him a habitual traffic offender.

On appeal, defendant contends we must reverse the true findings with respect to his having three prior DUI convictions because his admission to having these convictions was not knowing and voluntary. This is so, he argues, because he was not adequately advised of all penal consequences of the admissions, specifically the possibility the trial court would revoke his driver's license for 10 years. The contention is forfeited for failing to object in the trial court. In any event, the trial court was not required to inform defendant of the possible revocation of his driver's license because such a possibility was a collateral consequence of the admissions. We therefore affirm the judgment.

#### BACKGROUND

Our resolution of this appeal does not require a detailed recitation of the facts underlying defendant's convictions. For our purposes, it will suffice to state defendant was pulled over for speeding and because his car was weaving on the roadway. The officer who pulled defendant over smelled alcohol as he asked for defendant's license and registration. Defendant, whose speech was slow and slurred, then either refused or failed to successfully perform various field sobriety tests administered by the officer. Two preliminary alcohol screening tests indicated defendant's blood-alcohol content (BAC) was 0.158 percent and 0.137 percent, respectively. After defendant was arrested and taken to a hospital for a blood draw, he stated he would not allow a sample of his blood to be taken. Later, about 90 minutes after he was pulled over, a technician was able to obtain a sample of his blood. Testing of the sample revealed defendant's BAC was 0.14 percent, which suggested his BAC was at least 0.16 percent at the time he was driving.

After the jury convicted defendant of DUI and driving with a BAC of 0.08 percent or more, the parties informed the trial court that defendant, who had

already waived his right to a jury trial on allegations he had three prior DUI convictions, would admit these allegations with the understanding the prosecutor would not ask for his immediate remand into custody. Before taking the admissions, the trial court advised defendant: “In connection with those allegations, you do have the right, first of all, to be represented by your attorney. You have the right to have a trial to determine whether or not those allegations are true. Given that you waived your right to have a jury make that determination, that trial would be by a judge, likely myself. [¶] In connection with that trial, you’ve got the right against self-incrimination, which is also called the right to remain silent. So, that means you cannot be required to say anything about these allegations. [¶] You also have the right to be present throughout the trial and the right to see, hear, and cross-examine all witnesses who would be called to testify. [¶] You also have the right to present evidence with regard to these allegations and the right to testify, if you wish to, and also the right to use the Court’s power to require other people to come to court and provide testimony and to require people to bring any evidence to court that might assist you with your trial.” Defendant stated he understood and wanted to “give up” his trial rights with respect to the prior conviction allegations.

At this point, the trial court advised defendant: “And you do understand that these allegations elevate the convictions [for DUI and for driving with a BAC of 0.08 or more] to felony status.” Defendant stated: “Yes, I understand.” The trial court then asked defendant: “And do you also understand that the maximum possible penalty with regard to the felony charges, then, would be three years of prison time?” Defendant answered: “Yes, of course. Yes.” Defendant then stated that, aside from the prosecutor’s promise to not seek immediate remand, no promises were made to secure his admissions, nor was he threatened or otherwise forced to admit the allegations. Following these advisements, defendant admitted to having three prior DUI convictions. The trial court accepted the admissions and found the allegations to be true.

## DISCUSSION

Defendant claims we must reverse the trial court's findings he had three prior DUI convictions because he was not adequately advised of all penal consequences of admitting to having these prior convictions, specifically the possibility the trial court would revoke his driver's license for 10 years. The claim is forfeited.

"A defendant who admits a prior criminal conviction must first be advised of the increased sentence that might be imposed. [Citations.] However, unlike the admonition required for a waiver of constitutional rights, advisement of the penal consequences of admitting a prior conviction is not constitutionally mandated. Rather, it is a judicially declared rule of criminal procedure. [Citations.] Consequently, when the only error is a failure to advise of the penal consequences, the error is waived if not raised at or before sentencing." (*People v. Wrice* (1995) 38 Cal.App.4th 767, 770-771; *In re Yurko* (1974) 10 Cal.3d 857, 864.) Here, as defendant acknowledges, his trial counsel "concurred in [his] admission and did not object" that the trial court failed to advise defendant it might revoke his driver's license for 10 years. The claim is therefore forfeited. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2 [the correct legal term for loss of a right based on failure to assert it in a timely fashion is forfeiture, not waiver].)

In any event, the requirement that a defendant be advised of penal consequences of a plea or admission "relates to the primary and direct consequences involved in the criminal case itself and not to secondary, indirect or collateral consequences. [Citations.] A collateral consequence is one which does not 'inexorably follow' from a conviction of the offense involved in the plea" or true finding as to the enhancement allegation admitted. (*People v. Crosby* (1992) 3 Cal.App.4th 1352, 1355; see *People v. Gurule* (2002) 28 Cal.4th 557, 634 ["If the consequence is only collateral, no advisement is required"].) Here, defendant's driver's license was revoked pursuant to Vehicle Code section 23597, which provides that "a court *may* order a 10-year revocation of a driver's license of a person who has been convicted of three or more separate [DUI] violations" in

certain circumstances, and requires the court to consider six factors in exercising its discretion to impose such an order. (Veh. Code, § 23597, subd. (a), italics added.) Thus, revocation of a driver's license under this provision does not inexorably follow from an admission to having three prior DUI convictions. Accordingly, even if the claim were preserved, we would reject it.

#### DISPOSITION

The judgment is affirmed.

\_\_\_\_\_/s/  
HOCH, J.

We concur:

\_\_\_\_\_/s/  
BLEASE, Acting P. J.

\_\_\_\_\_/s/  
ROBIE, J.